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March 31, 2023

Mark Langer, Clerk
U.S. Court of Appeals for the
District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
and William B. Bryant Annex
333 Constitution Ave., NW
Washington, D.C. 20001

Re: *American Society for Testing and Materials, et al., v. Public.Resource.Org, Inc.*, No. 22-7063 (Argued on March 20, 2023)
Response to Plaintiffs-Appellants' Notice of Supplemental Authority Pursuant to Federal Rule of Appellate Procedure 28(j)

Dear Mr. Langer:

On behalf of Defendant-Appellee Public.Resource.Org, I write in response to Plaintiffs-Appellants' March 29 letter regarding *Hachette Book Group, Inc. v. Internet Archive*, No. 20-cv-4160, 2023 WL 2623787 (S.D.N.Y. Mar. 24, 2023).

The decision in *Hachette* is no more "pertinent and significant" to this case than any other out-of-circuit district court fair use decision for multiple reasons, beginning with the subject matter of the two cases. Fed. R. App. P. 28(j). *Hachette* concerns a digital lending program, and the works at issue are 127 books, ranging from novels to poetry to literary nonfiction. In this case, the use concerns making the law available, and the works at issue are standards that have been incorporated into law.

Public.Resource.Org believes *Hachette* was wrongly decided. But either way, the decision provides no persuasive authority or guidance on the right to raise public awareness of the law by posting the National Electrical Code, or any other codes that have been incorporated by reference into law.

Sincerely,

FENWICK & WEST LLP

/s/ Matthew Becker

Matthew Becker